

Before You Buy - Before You Build

Are you considering buying undeveloped land? Building a home, a retail center, or marina? How about putting in a new driveway, garage, deck, pool, or addition to your house? In every case, the presence of wetlands may affect where and whether you buy, build, or develop. In New Jersey and throughout the United States, wetlands are protected on public and private property.

New Jersey protects freshwater wetlands under the New Jersey Freshwater Wetlands Protection Act, N.J.S.A. 13:9B. This law also protects transition areas or “buffers” around freshwater wetlands. New Jersey has a different law (the Wetlands Act of 1970) to protect coastal wetlands. See the pamphlet entitled “Guide to New Jersey’s Coastal Permitting Program” if you are in a coastal area and think you may have coastal wetlands on your property.

What Are Wetlands?

Wetlands are commonly referred to as swamps, marshes, or bogs. However, many wetlands in New Jersey are forested or farmed and do not fit the classic picture of a swamp or marsh. Previously misunderstood as wastelands, wetlands are now being recognized for their vital ecological and socioeconomic contributions.

What’s So Good About Wetlands?

Many of us grew up thinking wetlands should be drained for farming or filled in for development. But wetlands contribute to the social, economic, and environmental health of our nation in many ways:

- ❑ Wetlands protect drinking water by filtering out chemicals, pollutants, and sediments that would otherwise clog and contaminate our surface and ground waters.
- ❑ Wetlands soak up runoff from heavy rains and snow melts, providing natural flood control.
- ❑ Wetlands release stored flood waters during droughts, maintaining minimum flows in streams.

- ❑ Wetlands provide critical habitats for a major portion of the State’s fish and wildlife, including endangered, commercial, and recreational species.
- ❑ Wetlands provide high quality open space for recreation and tourism.

Many of these values were not widely appreciated until the 1970s and 1980s. By then, more than half of the nation’s wetlands were destroyed. The New Jersey freshwater wetlands program protects freshwater wetlands, and certain upland areas within 150 feet of wetlands (sometimes called “buffers”), from development which will impair the wetlands’ ability to provide the values listed above.

Why Do Wetlands Need Protection?

Over the last 200 years, the United States has lost over 117 million acres of its wetlands through dredge and fill activities, drainage, development, conversion to farmland, pollution, and natural causes. Erosion, flooding, and sedimentation have resulted. Furthermore, the decrease in wetlands has decreased populations of waterfowl, fish, and shellfish. With over 54 percent of the total wetlands in the continental United States already lost, and an additional 200,000 acres disappearing every year, protecting our remaining wetlands has become a critical national priority.

How Do I Tell If My Land Might Contain Wetlands?

No one can be sure if an area is wetlands without gathering detailed information about the site and inspecting the property. For a definite determination, you may need to hire an environmental consultant. Here are some clues that an area might be a wetland. If your land has any of the conditions below, you should investigate before going ahead with a project:

- ❑ The area often has standing water;
- ❑ The area is a low spot that holds water for several days after a heavy rain;
- ❑ The water table in the area is not far below the ground surface;

- ❑ Your land contains a stream or pond, with gentle banks (you may have a fringe of wetlands along the banks); or
- ❑ Your land is located near a river, stream, or lake.

Do not assume that an area cannot be a wetland because it has a mature forest on it, or because it does not have standing water. Many wetlands in New Jersey are forested areas without visible standing water.

If you think you might have wetlands on your land:

- ❑ Look at the New Jersey freshwater wetlands maps. Your municipal clerk and county clerk’s office have both been given these maps for public use. The maps can also be obtained from DEP’s Maps and Publications Office at (609) 777-1038, or, if your county or public library has a GIS (Geographic Information System) computer system, the maps can be viewed on the library’s computer.
- ❑ The New Jersey freshwater wetlands maps provide guidance on where wetlands are found in New Jersey, but they are not the final word. Only an official determination from DEP, called a “letter of interpretation,” can tell you for sure if you have freshwater wetlands or transition areas on your property. A letter of interpretation (LOI) verifies the presence, absence, or boundaries of freshwater wetlands on a site, and if wetlands are present, will tell you how big the transition area or buffer is.

To get a letter of interpretation from the DEP, call (609) 292-0060 and ask for the LOI information and application package. LOIs range from simple to complex, with a corresponding range of fees and application review times.

What If My Land Contains Freshwater Wetlands?

If your land contains freshwater wetlands, you are very limited in what you may do in the wetlands. The Freshwater Wetlands Protection Act requires DEP to regulate virtually all activities proposed in the wetland, including

cutting of vegetation, dredging, excavation or removal of soil, drainage or disturbance of the water level, filling or discharge of any materials, driving of pilings, and placing of obstructions.

The most common type of freshwater wetlands permit is a general permit. General permits cover certain very minor activities. There are currently general permits for 23 activities, including:

- ❑ repair of existing structures
- ❑ construction of short roads or driveways less than 100 feet long
- ❑ construction of docks
- ❑ construction of underground or above-ground utility lines
- ❑ stream bank stabilization
- ❑ septic system repair
- ❑ small additions to homes that were built before 1988

If your activity is not eligible for authorization under a general permit, DEP may, in very limited circumstances, issue an individual freshwater wetlands permit. To obtain an individual permit, an applicant must demonstrate that there is no other, less environmentally damaging alternative to the project. Individual permits are therefore much less common than general permits.

Are There Any Exemptions?

There are limited exemptions for existing farming, ranching, or forestry operations. There are also limited exemptions from transition area requirements only (freshwater wetlands requirements still apply) for projects with certain local approvals before 1988. Wetlands disturbances in the Hackensack Meadowlands Development Area are exempt from the DEP wetlands program, but require permits from the U.S. Army Corps of Engineers and/or the Hackensack Meadowlands Development Commission. Most wetlands disturbances in the Pinelands are subject to the DEP rules, but the permits are issued by the Pinelands Commission rather than DEP.

What About “Buffers”?

If you want to pursue activities in an area within 150 feet of a wetland, you may be in a transition area (sometimes called a buffer) and you may need a DEP transition area waiver. A transition area is a strip of land bordering the wetlands. The width of the transition area may vary from 150 feet down to nothing, depending on the value of the particular wetland. For example, a wetland containing endangered species habitat would require a 150-foot wide transition area, whereas a small wetland in a ditch might not require any transition area at all. Most freshwater wetlands require a 50-foot transition area.

There are many small activities that can be pursued in a transition area under general permits, like the general permits discussed above for activities in freshwater wetlands. In addition, in some cases the transition area’s shape may be altered to allow an activity, without diminishing its total size. This is called transition area averaging.

Are There Other Regulations I Should Know About?

Check the table of DEP Land Use Regulation Programs that follows to see if you may be affected by any other DEP Land Use Regulation Programs. In addition, the following regulatory programs administered by other agencies may affect projects in freshwater wetlands in New Jersey:

- ❑ Federal Wetlands Program (404 Program).

In some parts of New Jersey, in addition to a DEP freshwater wetlands permit, you may also need a federal wetlands permit, issued by the U.S. Army Corps of Engineers under Section 404 of the Clean Water Act. An Army Corps permit is needed in the Hackensack Meadowlands area, Greenwood Lake, and in any tidally flowed waters or wetlands. Contact the U.S. Army Corps of Engineers in Philadelphia at (215) 656-6500, or New York City at (212) 264-4185 or 264-6731.

Pinelands Comprehensive Management Plan. The Pinelands Commission administers the DEP’s freshwater wetlands general permit program in the Pinelands, but also may impose its own wetlands requirements in the Pinelands. Contact the Pinelands Commission at (609) 894-9342.

DEP LAND USE REGULATION PAMPHLETS:

- Guide to NJ’s Coastal Permitting Program
- Guide to NJ’s Freshwater Wetlands Permitting Program
- Guide to NJ’s Stream Encroachment Permitting Program

TO CONTACT DEP: (all area codes are 609)

- Essex, Morris, Bergen 633-9277
- Middlesex, Hudson, Somerset, Union 633-6754
- Hunterdon, Mercer, Passaic, Sussex, Warren 984-0194 or 777-0454
- Cumberland, Camden, Salem, Gloucester 984-0162 or 633-6755
- Cape May, Monmouth, Atlantic, Ocean, Burlington 984-0288 or 292-8262

DEP LAND USE REGULATION PROGRAMS

Law	Natural feature protected	Types of activities regulated
Freshwater Wetlands Protection Act, N.J.S.A. 13:9B (rules at N.J.A.C. 7:7A)	Freshwater wetlands	Disturbance or destruction of water level, soil or vegetation, such as by draining, filling, or clearing
	Transition areas or “buffers” around freshwater wetlands	Same activities as in freshwater wetlands, except that normal property maintenance is allowed
	Lakes, ponds, rivers, streams, etc.	Discharge of dredged or fill material
Flood Hazard Area Control Act (stream encroachment), N.J.S.A. 58:16A (rules at N.J.A.C. 7:13)	Rivers, lakes, and streams, and their flood plains	Any construction activity or human land disturbance, such as placement of structures or fill, excavation, dredging
Coastal Area Facility Review Act (CAFRA), N.J.S.A. 13:19 (rules at N.J.A.C. 7:7 and 7:7E)	Most shore areas south of Cheesequake Creek and along the Delaware south of Kilcohook National Wildlife Refuge	Development activities, including excavation, grading, filling, and site preparation; and construction or placement of structures, including docks, bulkheads, shore protection structures, single family homes, residential developments, and commercial or industrial facilities
Waterfront Development Act, N.J.S.A. 12:5-3 (rules at N.J.A.C. 7:7 and 7:7E)	All land within or under tidally flowed waters throughout New Jersey; and in addition land adjacent to tidally flowed waters outside the CAFRA area, up to a maximum of 500 feet from the high water line	
Wetlands Act of 1970, N.J.S.A. 13:9A (rules at N.J.A.C. 7:7 and 7:7E)	Wetlands shown on the DEP Coastal Wetland Maps	Placement of structures or fill, excavation or dredging, application of pesticides
Tidelands Act, N.J.S.A. 12:3-1	Lands that are now tidally flowed, or were formerly tidally flowed (unless specifically granted to another owner by the State)	Placement of a structure that will exist for more than ten days, excavation, dredging

Land Use Regulation Program
Department of Environmental Protection
501 East State Street
P.O. Box 439
Trenton, New Jersey 08625-0439
Telephone: 609-292-0060
Fax: 609-292-8115
www.state.nj.us/dep/landuse

The DEP has made every effort to ensure that the information provided here is accurate. However, this pamphlet is only a general guide. For a complete, detailed description of the Freshwater Wetlands Permit program, please refer to the Freshwater Wetlands rules at N.J.A.C. 7:7A.

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Guide to
New Jersey’s
Freshwater Wetlands
Permitting Program



New Jersey Department of
Environmental Protection